IN THE HIGH COURT OF JUDICATURE AT BOBBY
APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO.798 OF 1997

Shri Navnath Machindra Kandhare)
Age 35 years, Occ. Nil, resident)
of Narkhed, Taluka Mohol,)
District - Solapur.) ...Appellant.

V/s

State of Maharashtra) ...Respondent.

Mr. N.J. Patil, advocate for the appellant.

Mr. V.R. Bhonsale, APP for the State.

CORAM: V.G. PALSHIKAR & R.C. CHAVAN, JJ.

DATE : 13TH JULY, 2005

ORAL JUDGMENT: (Per R.C. Chavan, J.)

1. Being aggrieved by his conviction for offences punishable under sections 302 and 498A of the Indian Penal Code recorded by the learned Additional Sessions Judge, Solapur, and the resultant sentence imposed upon him, the appellant has preferred this appeal.

2. Facts which led to prosecution of the accused for harassment and murder of his wife are as under:-

3. Complainant Changdeo's daughter Rajabai was married to accused about 11 years prior to the incident and the couple was blessed with three children. The accused was, however, in habit of

consuming liquor and used to ill-treat his wife suspecting her character. In spite of attempt by relations, there was no improvement in the behaviour of the accused. This led the appellant's wife to leave for her parental home, a few days before the incident. However, just a day before the incident, she returned to her matrimonial home when her son came with message of his grand-father.

4. On 28/12/1996, the deceased had gone to forest to collect fire wood and returned at about 5.00 p.m. She was waiting for her husband, after preparing food for children. The appellant returned at 8.30 p.m. under the influence of liquor and questioned as to why she had gone to forest without his permission. He started beating her and then poured a bottle of kerosene on her person and set her on fire. She raised a cry, ran out of the house and rolled over the ground to extinguish the fire. Her relations took her to government hospital at Mohol where she was given first aid and then shifted to civil hospital at Solapur. While under treatment at civil hospital at Solapur, she stated about the cause of her burns, not only to Medical Officer but also to the Head Constable and Special Executive Magistrate. An offence was registered and investigation commenced. The victim succumbed to her injuries. After inquest, her body

was sent for post-mortem examination. On completion of investigation, charge-sheet was sent to the learned Judicial Magistrate, First Class, Mohol who committed the case to the Court of Sessions at Solapur.

5. The learned Additional Sessions Judge, Solapur, charged the accused of offences punishable under sections 498A and 302 of the Indian Penal Code. The accused pleaded not guilty and hence was put to trial.

6. In its attempt to bring home the guilt of the accused, prosecution examined in all 8 witnesses. The accused too was examined under section 313 of the Criminal Procedure Code and upon consideration of prosecution evidence, in light of arguments advanced, the learned Additional Sessions Judge came to hold the accused guilty of both the offences punishable under sections 302 and 498A of the Indian Penal Code and proceeded to sentence him to suffer imprisonment for life and R.I. for one year respectively with fine of Rs 5000/- or, in default, further R.I. for one month.

Aggrieved thereby, accused has appealed.

7. We have heard the learned counsel for the appellant as also the learned Additional Public Prosecutor. There is no dispute about the fact that the victim met with her death on account of 82% burn

injuries as mentioned in the notes of post-mortem examination at Exhibit-9 and the cause of death certified at Exhibit-8. The question is how the victim sustained these burns. There is, obviously, no eye witness to the incident. The case depends upon the account of the incident given by the victim herself.

8. The defence of the accused is that the victim gave such account to the authorities on being tutored by her father and, therefore, the account was not to be believed. It seems that, according to the appellant, the victim had set herself on fire when he was not at home. This can be found from his statement under section 313 of Cr.P.C. at Exhibit-42. It is indeed surprising that the accused should be able to tell as to how the victim sustained injuries when he was himself not at home. In that case, it would be enigmatic as to what provoked the victim to set herself on fire to put an end to her life. The explanation sought to be furnished by the accused itself casts a shadow of doubt on his version of the incident. We are, however, alive to the requirement of the cannons of criminal law that the prosecution must prove its case on its own merits and cannot depend on weakness of the defence. Therefore, disregarding this curious statement of the accused at

Exhibit-42, we would proceed to examine the evidence tendered before the trial court.

9. In this case, prosecution examined one Somraj Mangalpalli - P.W.1 at Exhibit-16. He is a Special Executive Magistrate and he is in government service. He states that on the midnight of 28/12/1996, he received requisition from police for recording dying declaration of the victim vide Exhibit-17. Accordingly, he went to the hospital and contacted Dr. Devulkar who was in-charge of the concerned Ward. The doctor made an endorsement that the victim was conscious and he could record the statement of victim. He then recorded the statement of the victim and took her thumb impression thereon. After completing recording of dying declaration, the witness again requested doctor to certify that the victim was fit to make statement. Accordingly, doctor certified. The dying declaration at Exhibit-18 proved by P.W.1 - Somraj categorically states that, at about 8.30 p.m., the victim's husband had poured kerosene on her person and set her on fire. She had categorically stated that she had a complaint against her husband. She said that her husband used to drink and beat her up on suspicion about her. She stated that her husband tried to take her life.

10. It may be seen that P.W.2 - Dr. Guralwar was on casualty duty when on 28/12/1996, at about 11.05 p.m., the victim was brought to the hospital and gave history of homicidal burns. Dr. Guralwar had proved case-paper at Exhibit-20. The entire medical case record of the victim repeatedly shows that the history of homicidal burns given by victim was duly recorded.

11. P.W. 2 - Dr. Guralwar also stated that the Magistrate arrived at Casualty Ward and inquired with him (and not Dr.Devulkar, as stated by P.W. 1 - Somraj, possibly erroneously) about the condition of patient. He examined the patient and found her fit to make statement and made an endorsement to that effect on Exhibit-18. He further stated that, again, when the police sought to record the statement of victim vide Exhibit-21, he examined the patient and gave certificate about patient being fit to make statement. It may be seen that the victim had been admitted to hospital on 28/12/1996 and was pronounced dead at 2.10 a.m. on 31/12/1996. Thus, there is nothing unnatural about the patient's being well oriented and fit to make statement on 29/12/1996. A small discrepancy as to whether the patient was in Intensive Care Ward or not in the evidence of P.W. 1 Somraj and P.W. 2 - Dr.Guralwar is irrelevant as what may seem to a lay man as an Intensive Care Ward, may not be so for the

doctor on duty. Cross-examination of Dr. Guralwar does not create any doubt about his word that he examined the victim and gave necessary certificates.

12. The dying declaration at Exhibit-21 which too bears endorsement of P.W.2 - Dr. Guralwar was recorded by P.W. 5 - Head Constable Baswant Patil. He stated that on receipt of direction from Station House Officer, he went to Casualty Section, made necessary inquiries with Dr. Guralwar about fitness of the patient to make statement and recorded statement. Then, he sent Police Constable to call Special Executive Magistrate. His cross-examination too does not disclose any reason to disbelieve the veracity of the statement recorded by him. He has stated that he had taken due care while recording statement of the victim. The victim had categorically stated that on the date of incident, at about 8.30 p.m., her husband came drunk, asked her as to why she had gone to forest without his permission, took out Rockel Can, sprinkled rockel on her person and set her on fire.

13. There is yet another dying declaration recorded by P.W.8 - API Mane after having the victim examined by Dr. Jadhav - P.W. 6. This was recorded on 29/12/1996 at about 10.30 p.m., i.e. almost 24 hours

after the incident. This too seems to have been recorded after taking due care. This dying declaration is at Exhibit-33. Here too, victim has given same account but has only clarified that in her previous dying declaration she has mentioned that her husband had sprinkled kerosene from a Can. She corrected it to "sprinkled kerosene from bottle". She clarified that she had referred to "Can" because she was in a puzzled state of mind when her first statement was recorded.

14. The learned Counsel for appellant wondered why the three dying declarations have been recorded. It was also alleged that whatever is stated in the dying declaration was the result of the victim being tutored by her parents. The cause for tutoring was said to be failure of the accused to refund a sum of Rs 5000/- borrowed by him from father-in-law. This seems incredible. For non-payment of small sum of Rs 5000/-, a father would not provoke his daughter to make a false statement indicating involvement of her husband, when the couple have three children.

15. The victim’s father Changdeo was examined as P.W.3. He too stated that on learning of the incident from relatives, he reached hospital at Mohol and, from there, accompanied his daughter to civil hospital at

Solapur. He too stated that his daughter had informed him that her husband set her on fire, expressing suspicion about her. P.W. 3 - Changdeo had plainly admitted in his cross-examination that the accused had, indeed, borrowed Rs 5000/- from him for improvement in his land and had not refunded that amount but denied that there was a quarrel on that count. Had the victim's father desired to make false accusations, he would have denied the story about his having lent a sum of Rs 5000/- to his son-in-law. The plainness with which P.W.3 - Changdeo stated about his advancing a small sum to his son-in-law for improvement of land of accused, itself lends ring of truth to the story deposed to by him.

16. The learned Counsel for the appellant questioned as to how three dying declarations came to be recorded. The explanation is not far to seek. It is obvious that when informed of a critically injured victim being in the hospital, Police Officer on duty was bound to first elicit from the victim the circumstances in which she sustained those injuries. He could not have predicted as to how long the victim would continue to be in a position to make a statement and, therefore, he could not have taken risk of silently waiting for the arrival of Special Executive Magistrate. As for the third dying declaration

recorded by P.W.8 - A.P.I. More, it seems that it became necessary to explain the fact that the victim was sprinkled with kerosene not from a Can but from a bottle as could be seen from panchnama of spot drawn up on 29/12/1996 in presence of P.W.4 - Raut at about 15.15 hours. Here, a bottle containing small quantity of kerosene was found and not a Can. Obviously, the Investigating Officer felt that a clarification from the victim was necessary. Therefore, there is nothing incredible or unnatural in having three statements of the victim. All the statements are cohesive and all indicate complicity of the accused in the ghastly act.

17. In these circumstances, hostility of neighbour P.W. 7 - Tatya Karpe, who has been won over, is irrelevant and can be ignored.

18. The learned Counsel for the appellant submitted that the learned trial judge was in error in convicting the appellant of offence punishable under section 498A of the Indian Penal Code since the death had not occurred within seven years of marriage. This contention is raised on the incorrect premise that the offence under section 498A can be committed only within seven years of marriage. The offence of cruelty under section 498A of I.P.C. is neither restricted by the length of time since marriage nor is

it restricted to demand of dowry. In the instant case, ill-treatment meted out to the victim had culminated in her death. Therefore, we see nothing wrong in the conviction for an offence punishable under section 498A I.P.C. recorded by the learned Additional Sessions Judge.

19. The learned Counsel for the appellant relied on a decision of our High Court in the case of Shri Gautam Damaji Nagrale Vs. The State of Maharashtra reported in **2000 ALL MR (Cri) 485**. He submitted that, in the said case, just like the case at hand, the prosecution was solely dependent on dying declaration. He pointed out that even, in that case, the accused had sustained burn injuries. According to the learned Counsel, therefore, just as in that case the High Court had set aside conviction and allowed the appeal, this appeal ought to be allowed. We are afraid that the learned Counsel for the appellant has chosen to pick out only those similarities which are favourable to him. It is true that in the present case too, the accused had claimed that his hands sustained injuries while extinguishing fire. Since the injuries do not carry a time tag, they could as well have been caused when victim was set on fire.

20. One of the observations by the Bench deciding

Gautam Nagrale's case was that the Investigating Officer had not taken proper care to collect medical case record from the hospital. In this case, entire medical case record is before the Court. Further, in the case at hand, the victim had not once but thrice stated that her husband had set her on fire, in addition to so stating before the Medical Officer at the time of her admission. It is difficult to brand this consistent version as tutored replication of a story conveyed by her parents.

21. Courts have to record reasons for the conclusions which they draw from the material placed before them. In criminal cases, where conclusions are mostly based on appreciation of evidence restricted to questions of fact, previous judgments of Courts of coordinate jurisdiction could be of little use. These judgments would only point to what judges felt on the basis of testimony appraised by them. These observations do not pertain to interpretation or exposition of any provision of law and, therefore, do not create any binding precedent. Therefore, merely because a Bench of this Court had proceeded to acquit the accused in another case of burning of wife based on dying declaration, it does not follow that this Court too should take the same course.

22. The learned Counsel for appellant came with specious argument that the victim herself had repeated her father's demand for refund of Rs 5000/-. This led to the quarrel. Provocation was thus offered by victim and hence the case may fall in one of the clauses of section 304 of the Indian Penal Code! Comments on this contention are really unnecessary. Yet, we may observe that such a defence has not been taken before the trial court. The accused has not said that he was provoked into putting his wife on fire. We are however sure that had such defence been taken before the trial court, it would have been yet one more ground for handing down conviction of the appellant under section 302 of the Indian Penal Code.

23. In the result, on reappreciation of the entire evidence, we see absolutely no reason to differ with the conclusions drawn by the learned trial judge. Not only did the prosecution prove that the appellant harassed his wife and subjected her to cruelty by expressing suspicion about her and ill-treating her in drunken state over a period of time, but also, ultimately, set her on fire, resulting in her death.

24. The appeal, therefore, fails and is dismissed. The appellant shall surrender to his bail before the learned Sessions Judge who shall take appropriate

steps to commit the accused to prison to serve out rest of the sentence.

(V.G. PALSHIKAR, J.)

(R.C. CHAVAN, J.)